IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6887 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAJIVBHAI P. SHAH

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6887 of 2002

MR PARESH M DAVE for Petitioner No. 1-3

MR DN PATEL for Respondent No. 1

..... for Respondent No. 2-3

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 12/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr DN Patel, learned Sr. Standing Counsel waives service of rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 15-1-2002 passed by the CEGAT, Mumbai as well as the order dated 28-5-2002 passed by the same bench of the CEGAT rejecting the petitioners' miscellaneous application for modification in the earlier order requiring the petitioners No.1, 2 and 3 to pay sums of Rs.50,000/-, Rs.2 lacs and Rs.50,000/- respectively as pre-deposit for hearing of their appeals against the order of the Commissioner of Central Excise imposing penalty of Rs.50,000/-, Rs.4 lacs and Rs.50,000/- as per the Order in Original dated 27-12-2000.

3. Mr PM Dave, learned counsel for the petitioners submits that as far as the Company- Maheshwari Mills Ltd. is concerned, the Tribunal has not passed any order for pre-deposit and the appeal of the Company on merits is going to be heard. It is further submitted that the allegation against the petitioners only involves the same question about interpretation and application of the principles of valuation of the goods for the purpose of determining excise duty and that there is no allegation about suppressed sales. It is, therefore, submitted that as no order for pre-deposit is passed against the Company, there is no justification for requiring the petitioners, who are executives of the Company, to pre-deposit any amount towards penalty.

4. On the other hand, Mr DN Patel, learned Sr. Standing Counsel for the respondents has submitted that the Tribunal has passed a just and appropriate order in view of the findings given by the Commissioner in the following terms:-

> "As regards imposition of personal penalty I find Shri Maheshbhai Jayantilal Shah, Managing Director of M/s. Maheshwari Mills Ltd. was primarily responsible for taking wrong decision to clear yarn on beam for sale while paying duty at spindle stage and thereby he abetted personal penalty under Rule 209A of Central Excise Rules, 1944. I find that Shri Rameshchandra R. Chaudhry, Vice President, Shri Rajiv P. Shah, General Manager (Marketing), Shri Gunvantbhai A Shah, Cost Accountant and Shri Jagdishbhai L. Dave, Excise Clerk were also

concerned in filing wrong assessable value of the yarn and thereby abetting the company in evasion of Central Excise duty and therefore, they are liable for penalty under Rule 209A of Central Excise Rules, 1944."

5. Having heard the learned counsel for the parties, it appears that the penalty has been imposed on the ground of evasion of duty by taking wrong decision to clear yarn on beam for sale while paying duty at spindle stage. However, the learned Sr. Standing Counsel for the revenue is not in a position to dispute that the question whether duty should be assessed on the basis of the value of the goods after sizing or before sizing is the main controversy, which is pending before the Tribunal in appeal filed by Maheshwari Mills Ltd. which is exempted from payment of duty pending the appeal on the ground that the Company is before the BIFR.

6. In view of the aforesaid facts and circumstances and the fact that the real controversy between the Company and the Department is about interpretation of the principle of assessment of the goods, when the Company is exempted from payment of duty, there is no justification for requiring the executives of the Company to pre-deposit any amount towards penalty.

7. In view of the above discussion, the petition is allowed. The impugned orders dated 15-1-2002 (Annexure D) and 28-5-2002 (Annexure H), passed by the Tribunal are quashed and set aside. The CEGAT, Mumbai shall hear the petitioners' appeals bearing Nos.E/1031, 1033 and 1034 of 2001 - Mum, on merits without requiring the petitioners to pre-deposit any amount towards penalty.

Rule is made absolute.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-